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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,142	07/03/2003	Patrick M. Cullen	64862/PO58US/10503203	6836
37372	7590	06/14/2006	EXAMINER	
FULBRIGHT & JAWORSKI, L.L.P. (ANS) 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784			MULLEN, KRISTEN DROESCH	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,142

Applicant(s)

CULLEN ET AL

Examiner

Kristen Mullen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the invention of Group III, claims 15-20 in the reply filed on 3/31/06 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Boveja (6,205,359)

Regarding claim 15, Boveja shows a method comprising: placing an implantable pulse generator in an activated mode using an external programming device (turning the device on); and sending a program-selection signal to the implantable pulse generator by the external programming device (by pressing buttons 1-9), wherein the implantable pulse generator stores at least two treatment protocol programs (programs # 1-9; Col. 12, line 39-Col. 13, line 4), each treatment protocol program being associated with at least one stimulation setting, and at least one of the programs being associated with a plurality of stimulation settings; thereafter controlling the operation of the implantable pulse generator by the external programming device (Col. 13, lines 10-28; Claims 15-22).

With respect to claims 16-17, Boveja shows delivering a power signal to the implantable pulse generator by the external programming device and the external programming device

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communicates with the implantable pulse generator using a radio-frequency signal (Figs. 2, 3A-B, 4A-B, 6; Col. 10, line 51-Col. 11, line 16; Col. 13, lines 10-35).

Regarding claim 18, Boveja shows the external programming device can control the pulse amplitude parameters of the pulses generated by the implantable pulse generator (either by using patient override mode or by changing from one predetermined program to another).

With respect to claim 19, Boveja shows the program selection signal designates which of the treatment protocol programs is to be executed by the implantable pulse generator (by pressing buttons 1-9 on external transmitter 42 shown in Fig. 13).

Regarding claim 20, a patient can use the external programming device.

The statements of intended use have been carefully considered but are not considered to impart any further structural or method step limitations over the prior art. The entirety of claim 20 comprises a statement of intended use and is not considered to impart a method step limitation.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. North (2005/0177206) and Daignault (2002/0116036, 6,748,276) each show methods for operating a stimulator with at least two programs including program selection via an external programming device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kristen Mullen
Patent Examiner
Art Unit 3766

kdm

A handwritten signature in black ink that reads "Kristen Mullen". The signature is written in a cursive, flowing style.